

Law 90-448, Aug. 1, 1968, 42 U.S.C. 4002 *et seq.*, and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4002 *et seq.*, as amended by the National Flood Insurance Reform Act of 1994 ("NFIRA"), Public Law 103-325, Sept. 23, 1994, 42 U.S.C. 4001-4129, together create the National Flood Insurance Program ("NFIP") which established specific requirements applicable to the Enterprises. NFIRA designates OFHEO as the Federal agency responsible for determining compliance by the Enterprises with these statutes and with reporting to Congress biannually for six years on the Enterprises' compliance. OFHEO has the authority to issue any regulations necessary to carry out the applicable provisions of NFIRA. OFHEO is also charged with enforcing the requirements of NFIRA as to the Enterprises and provides for the assessment of civil money penalties for violations of the procedures established by the Enterprises pursuant to the law or implementing regulations.

(b) *Scope.* This part sets forth the responsibilities of the Enterprises under NFIRA and the procedures to be used in any proceeding to assess civil money penalties against an Enterprise under NFIRA.

§ 1773.2 Requirements.

(a) *Procedures.* Each Enterprise shall implement procedures reasonably designed to ensure for any loan that is secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance is available under the NFIP, and purchased by such entity, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the NFIP.

(b) *Applicability.* (1) Paragraph (a) of this section shall apply only with respect to any loan made, increased, ex-

tended, or renewed after September 22, 1995.

(2) Paragraph (a) of this section shall not apply to any loan having an original outstanding balance of \$5,000 or less and a repayment term of one year or less.

§ 1773.3 Civil money penalties.

(a) *In general.* If an Enterprise is determined by the Director of OFHEO to have engaged in a pattern or practice of purchasing loans in violation of the procedures established pursuant to the NFIA, as amended, or to § 1773.2, the Director may assess civil money penalties against such Enterprise in such amount or amounts as deemed to be appropriate under paragraph (c) of this section.

(b) *Notice and hearing.* A civil money penalty under this section may be assessed only after notice and an opportunity for a hearing on the record has been provided under 12 CFR part 1780.

(c) *Amount.* A civil money penalty under this section may not exceed \$385 for each violation. The total amount of penalties assessed under this section against an Enterprise during any calendar year may not exceed \$110,000.

(d) *Deposit of penalties.* Any penalties collected under this section shall be paid into the National Flood Mitigation Fund in accordance with 42 U.S.C. 4104d.

(e) *Additional penalties.* Any penalty under this section shall be in addition to, and shall not preclude, any civil remedy or criminal penalty otherwise available.

(f) *Statute of limitations.* No civil money penalty may be imposed under this section after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this section.

PART 1777—PROMPT CORRECTIVE ACTION

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AUTHORITY: 12 U.S.C. 1452(b)(2), 1456(c), 1718(c)(2), 1723a(k), 4513(a), 4513(b), 4514, 4517, 4611–4619, 4622, 4623, 4631, 4635.

SOURCE: 67 FR 3598, Jan. 25, 2002, unless otherwise noted.

§ 1777.1 Authority, purpose, scope, and implementation dates.

(a) *Authority.* This part is issued by the Office of Federal Housing Enterprise Oversight (OFHEO) pursuant to sections 1313, 1371, 1372, and 1376 of the Federal Housing Enterprises Financial Safety and Soundness Act (1992 Act) (12 U.S.C. 4513, 4631, 4632, and 4636). These provisions broadly authorize OFHEO to take such actions as are deemed appropriate by the Director of OFHEO to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises) maintain adequate capital and operate in a safe and sound manner.

(b) *Authority, purpose and scope of subpart A.* In addition to the authority set forth in paragraph (a) of this section, subpart A of this part is also issued pursuant to section 1314 of the 1992 Act (12 U.S.C. 4514), section 307(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and section 309(k) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(k)), requiring each Enterprise to submit such reports to OFHEO as the Director of OFHEO determines, in his or her judgment, are necessary to carry out the purposes of the 1992 Act. Subpart A of this part is also issued in reli-

ance on section 1317 of the 1992 Act (12 U.S.C. 4517) authorizing OFHEO to conduct examinations of the Enterprises. The purpose of subpart A of this part is to set forth a framework of early intervention supervisory measures, other than formal enforcement actions, that OFHEO may take to address emerging developments that merit supervisory review to ensure they do not pose a current or future threat to the safety and soundness of an Enterprise. OFHEO's initiation of procedures under subpart A does not necessarily indicate that any unsound condition exists. The supervisory responses enumerated in § 1777.11 do not constitute orders under the 1992 Act for purposes of sections 1371 and 1376 thereof (12 U.S.C. 4631 and 4636).

(c) *Authority, purpose, and scope of subpart B.* In addition to the authority set forth in paragraph (a) of this section, subpart B of this part is also issued pursuant to subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623), section 303(b)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(b)(2)), and section 303(c)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1718(c)(2)). These provisions authorize OFHEO to administer certain capital requirements for the Enterprises, to classify the capital of the Enterprises based on capital levels specified in the 1992 Act, and, in appropriate circumstances, to exercise discretion to reclassify an Enterprise into a lower capital category. Under these provisions, there are also automatic consequences for an Enterprise that is not classified as adequately capitalized, as well as discretionary authority for OFHEO to require an Enterprise to take remedial actions. Subpart B implements the provisions of sections 1364 through 1368, 1369(b) through (e), 1369C, and 1369D of the 1992 Act as they apply to the Enterprises (12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623). The principal purposes of subpart B are to identify the capital measures and capital levels that OFHEO uses in determining the capital classification of an Enterprise; to set out the procedures OFHEO uses in determining such capital classifications; to establish procedures for submission

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and review of capital restoration plans of an Enterprise that is not classified as adequately capitalized; and to establish procedures under which OFHEO issues orders pursuant to section 1366(b)(1) through (4) of the 1992 Act (12 U.S.C. 4616(b)(1) through (4)).

(d) *Effective dates of capital classifications.* Section 1364 of the 1992 Act (12 U.S.C. 4614(d)) directs OFHEO to determine capital classifications for the Enterprises by reference to two capital standards, consisting of the minimum or critical capital level on the one hand, and the risk-based capital level on the other. Section 1364(d) of the 1992 Act (12 U.S.C. 4614(d)) excludes consideration of whether the Enterprises meet the risk-based capital level in determining capital classifications or reclassifications under 1364, until one year after the effective date of OFHEO's regulation implementing OFHEO's risk-based capital test (issued under section 1361(e) of the 1992 Act (12 U.S.C. 4611(e)), until such time, section 1364(d) provides that an Enterprise is to be classified as adequately capitalized so long as it meets the minimum capital level. Subpart B contains a currently effective set of capital classifications omitting consideration of the risk-based capital level, as well as another set of capital classifications which will take effect, and displace the current set of capital classifications, on September 13, 2002 that is, one year after the effective date of OFHEO's risk-based capital rule published at 66 FR 47730, September 13, 2001.

§ 1777.2 Preservation of other authority.

(a) *Supervisory standards.* Notwithstanding the existence of procedures in § 1777.10 for the Director of OFHEO to designate certain developments for supervisory response under subpart A of this part, nothing in this part in any way limits the authority of OFHEO otherwise to take such actions with respect to any issue as is deemed appropriate by the Director of OFHEO to ensure that the Enterprises maintain adequate capital, operate in a safe and sound manner, and comply with the 1992 Act and regulations, orders, and agreements thereunder.

(b) *Capital floor.* Classification of an Enterprise as adequately capitalized in accordance with subtitle B of the 1992 Act and subpart B of this part indicates that the Enterprise meets the capital levels under sections 1361 and 1362 of the 1992 Act (12 U.S.C. 4611 and 4612) and regulations promulgated thereunder as of the times specified in the classification determination. Nothing in subpart B of this part or subtitle B of the 1992 Act limits OFHEO's authority otherwise to address circumstances that would require additional capital through regulations, orders, notices, guidance, or other actions.

(c) *Form of supervisory action or response.* In addition to the supervisory responses contemplated under subpart A of this part, and the authority to classify and reclassify the Enterprises, to issue orders, and to appoint conservators under subpart B of this part, the 1992 Act grants OFHEO broad discretion to take such other supervisory actions as may be deemed by OFHEO to be appropriate, including issuing temporary and permanent cease and desist orders, imposing civil money penalties, appointing a conservator under section 1369(a)(1) through (2) of the 1992 Act (12 U.S.C. 4619(a)(1) through (2)), entering into a written agreement the violation of which is actionable through enforcement proceedings, or entering into any other formal or informal agreement with an Enterprise. Neither the 1992 Act nor this part in any way limit OFHEO's discretion over the selection of the type of these actions, and the selection of one type of action under this part or under these other statutory authorities, or a combination thereof, does not foreclose OFHEO from pursuing any other action.

§ 1777.3 Definitions.

For purposes of this part, the following definitions will apply:

1992 Act means the Federal Housing Enterprises Financial Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*

Affiliate means an entity that controls an Enterprise, is controlled by an Enterprise, or is under common control with an Enterprise.

Capital distribution means: